

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HOLLY PARKER,

Plaintiff,

v.

EASTRIDGE PERSONNEL OF LAS  
VEGAS, INC., *et al.*,

Defendants.

Case No. 2:10-cv-00705-LDG (LRL)

**ORDER**

The plaintiff, Holly Parker, alleges the defendants, Eastridge Personnel of Las Vegas, Inc. and Southern Nevada Health District, violated the Americans with Disabilities Act. Eastridge moves to dismiss (#9) or, in the alternative, for a more definite statement (#10). The Health District joins in the motions (#15). Parker opposes both motions (#14). Having considered the allegations of the complaint and the arguments of the parties, the Court will dismiss the complaint without prejudice.

**Motion to Dismiss**

The defendants' motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6), challenges whether the plaintiff's complaint states "a claim upon which relief can be granted." In ruling upon this motion, the court is governed by the relaxed requirement of

1 Rule 8(a)(2) that the complaint need contain only “a short and plain statement of the claim  
2 showing that the pleader is entitled to relief.” As summarized by the Supreme Court, a  
3 plaintiff must allege sufficient factual matter, accepted as true, “to state a claim to relief that  
4 is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
5 Nevertheless, while a complaint “does not need detailed factual allegations, a plaintiff’s  
6 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels  
7 and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
8 *Id.*, at 555 (citations omitted). In deciding whether the factual allegations state a claim, the  
9 court accepts those allegations as true, as “Rule 12(b)(6) does not countenance . . .  
10 dismissals based on a judge’s disbelief of a complaint’s factual allegations.” *Neitzke v.*  
11 *Williams*, 490 U.S. 319, 327 (1989). Further, the court “construe[s] the pleadings in the  
12 light most favorable to the nonmoving party.” *Outdoor Media Group, Inc. v. City of*  
13 *Beaumont*, 506 F.3d 895, 900 (9<sup>th</sup> Cir. 2007).

14       However, bare, conclusory allegations, including legal allegations couched as  
15 factual, are not entitled to be assumed to be true. *Twombly*, 550 U.S. at 555. “[T]he tenet  
16 that a court must accept as true all of the allegations contained in a complaint is  
17 inapplicable to legal conclusions.” *Ashcroft v. Iqbal* 556 U.S. \_\_\_, 129 S.Ct. 1937, 1949  
18 (2009). “While legal conclusions can provide the framework of a complaint, they must be  
19 supported by factual allegations.” *Id.*, at 1950. Thus, this court considers the conclusory  
20 statements in a complaint pursuant to their factual context.

21       To be plausible on its face, a claim must be more than merely possible or  
22 conceivable. “[W]here the well-pleaded facts do not permit the court to infer more than the  
23 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the  
24 pleader is entitled to relief.” *Id.*, (citing Fed. R. Civ. Proc. 8(a)(2)). Rather, the factual  
25 allegations must push the claim “across the line from conceivable to plausible.” *Twombly*.  
26

1 550 U.S. at 570. Thus, allegations that are consistent with a claim, but that are more likely  
2 explained by lawful behavior, do not plausibly establish a claim. *Id.*, at 567.

3 The defendants' argument is succinct; they assert that Parker failed to sufficiently  
4 allege her disability.

5 In opposing the argument, Parker asserts that she adequately alleged that her  
6 complaint is based upon the ADA, that she filed a charge with the EEOC, that "her  
7 disability is the major life activity of 'standing,'" that she requested an accommodation and  
8 was required to obtain a letter from her doctor.

9 Under the ADA, a disability is defined as, "(A) a physical or mental impairment that  
10 substantially limits one or more of the major life activities of such individual; (B) a record of  
11 such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. §  
12 12102(2).

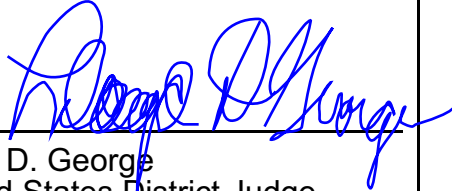
13 Parker's argument that she adequately alleged that "her disability is the major life  
14 activity of 'standing'" fails. Initially, the Court would note that, in her complaint, Parker did  
15 not allege that her disability is the major life activity of standing." Rather, she alleged that  
16 she has "a disability which limits her major life activity of standing." Further, an allegation  
17 that merely identifies the impaired major life activity is insufficient as an allegation of fact  
18 regarding the physical or mental impairment that substantially limits the major life activity.  
19 Parker's complaint lacks any allegation of fact regarding her physical or mental impairment  
20 that limits her ability to stand. Though such factual allegation need not be detailed, some  
21 allegation of fact regarding a physical or mental impairment is required.

22 Accordingly,

23 THE COURT **ORDERS** that Defendants' Motion to Dismiss (#9) is GRANTED;  
24 Plaintiff's Complaint is DISMISSED without prejudice. If Plaintiff chooses to file an  
25 amended complaint, such complaint must be filed twenty days from the entry of this Order.  
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1 THE COURT FURTHER **ORDERS** that Defendants' Motion, in the alternative, for a  
2 More Definite Statement (#10) is DENIED as moot.

3 DATED this 23 day of March, 2011.

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6 Lloyd D. George  
7 United States District Judge  
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